

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
52nd LEGISLATURE - 1st SPECIAL SESSION**

**COMMITTEE ON JUDICIARY**

**INFORMATIONAL HEARING ON PRISON RIOT**

**Call to Order:** By BILL STRIZICH, on January 14, 1992, at 10:00 A.M.

**ROLL CALL**

**Members Present:**

Bill Strizich, Chairman (D)  
Vivian Brooke, Vice-Chair (D)  
Arlene Becker (D)  
William Boharski (R)  
Dave Brown (D)  
Robert Clark (R)  
Paula Darko (D)  
Budd Gould (R)  
Royal Johnson (R)  
Vernon Keller (R)  
Thomas Lee (R)  
Bruce Measure (D)  
Charlotte Messmore (R)  
Linda Nelson (D)  
Jim Rice (R)  
Angela Russell (D)  
Jessica Stickney (D)  
Howard Toole (D)  
Tim Whalen (D)  
Diana Wyatt (D)

**Members Excused:** Reps. Dave Brown, Robert Clark, Paula Darko, Budd Gould, Bruce Measure, Charlotte Messmore and Diana Wyatt.

**Staff Present:** Mary Lou Schmitz, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Announcements/Discussion:** JOINT MEETING WITH HUMAN SERVICES COMMITTEE - COPY OF HUMAN SERVICES ROLL CALL ATTACHED.

Co-Chairs Bill Strizich and Angela Russell conducted the meeting and asked those giving testimony to limit their comments to 10 minutes.

**SEN. DICK PINSONEAULT, District 27,** said he was testifying as a person interested in the system and the problems and hoping to present constructive comments on how it might be improved. He made the following observation concerning the Disturbance Control Team. Several years ago, some of the prison employees who are directly involved in the system approached him and asked for his assistance to get money to provide them with additional training and, for their own protection, bullet proof vests in the event there were circumstances requiring them. He said these volunteers who participated in the Disturbance Control effort conducted bake sales to raise money to buy the vests for their own security. He found this appalling that the Legislature and the State of Montana did not provide money for this team when they responded to these sorts of incidents and had to go unprotected.

**CHAIRMAN STRIZICH** said that Legislators are all responsible for how they respond to this unfortunate incident and the reason for this meeting is to scope how the Legislature in the next Session is going to address some of the problems and assist the Department.

**Gerald Mueller, Missoula,** said he was outraged after reading the disturbance report and the failure of those responsible for managing the institution. He felt prison personnel could have prevented the riot and the loss of life, injury and property damage if they had been supervised, held accountable and understood the prison's mission. He suggested a Blue Ribbon Citizen's Panel, chaired by someone of the stature of retired District Judge Gordon Bennett, be created to restore public confidence in the prison.

**REP. GARY BECK, HD 48, DEER LODGE,** said he did not agree that the "Riot at Max" report was quite comprehensive. He said the experts were here for five days to gather all the evidence. He said they should take into consideration who they talked to and how much time they spent with different individuals concerning the report. Very little time was spent talking to staff members such as management and middle management people. More time was spent talking to inmates, wondering how often they tell the truth. He felt they have to look at where part of the testimony was gathered and how reliable it is. He feels a large majority of the people working at the prison are very dedicated and hard working. **REP. BECK** directed several questions to **Curt Chisholm, Director, Department of Corrections and Human Services.** He asked if the Department has ever conducted any audits at Montana State Prison? If so, when was the last time a security audit was done? He would like to have addressed some of the educational requirements for Department personnel. He would like to know the chain of command and salaries. He would like to know what is available from the National Institute of Corrections and how well they access those resources to his Department.

**Carol Mitchell, Attorney, Missoula** presented testimony **Exhibit 1.**

**Carley Tuss, American Civil Liberties Union,** presented testimony prepared by **Rosemary Boschert** who was unable to attend. See **Exhibit 2.**

**Kevin McRae, Field Representative, Montana Federation of State Employees,** which includes the Federation at Montana State Prison, said the Prison riot of September 22, 1991 has forced Montanans to take a tough look at the strengths and weaknesses of the corrections' system. While the events that lead to this scrutiny are tragic, they now have an unprecedented opportunity to fix the flaws and make working and living conditions better for all individuals associated with Montana State Prison. **Exhibit 3.**

**SEN. CHRIS CHRISTIAENS, Cascade County,** said the Intensive Supervision Programs that are currently in place in Billings and Missoula will not be extended to Great Falls this year and are scaled back under the current budget FY 1993. The overcrowded conditions at the prison are a problem. One of the things that came out of the report is the concern of inmates and others as to the medical needs of inmates. When an individual leaves the prison they become responsible for their own medical care. Because they are still inmates they do not qualify for anything such as Medicaid or medical assistance. When an individual in a pre-release center goes to work and is injured on the job he is not covered by Workers' Comp. They are treated differently, even though they are salaried and paying taxes. It is difficult to recruit adequate medical people for Montana State Prison. These needs should be looked at by the Legislature for help with this issue and other very serious situations.

**Toni Austad, Great Falls,** spoke on behalf of her brother who is a handicapped inmate at Montana State Prison. She asked the Legislature to look at the needs of the prison handicapped who are an ignored minority and listen to what families have to say in the decision making process.

**REP. HANSEN** asked **Mr. Chisholm** to respond to some of the questions posed by **REP. BECK.**

**Mr. Chisholm** said yes, in answer to "has the Department done a recent security audit"? The results are now in the hands of the Department and they are evaluating directly and indirectly relative to implementing those they can within current level budgets. Those they can't will be brought before the 1993 Session. **CHAIRMAN STRIZICH** asked if this is a routine audit? **Mr. Chisholm** said it is not routine due to the fact that before there was no incentive for having one done, monetarily or any other way. There should always be an attempt to set standards professionally.

In answer to **REP. BECK'S** question concerning educational backgrounds of people in the Department, **Mr. Chisholm** said

relative to the Corrections Division Administrator they are looking for, a Masters' level or equivalent in Corrections or equivalent in Social Psychology with progressively responsible administrative experience in Correctional Administration.

In response to a question concerning training, Mr. Chisholm said they have taken advantage of training programs, specific agendas to upgrade the professional or skill levels of parole and probation officers, pre-release center workers and people within the prison.

REP. BROOKE said one of the things that came out in some of the testimony is the staff evaluation for Warden MacCormick which must be good because he's still there. At what level does the Department take responsibility for those evaluations or is that taken care of through the system itself? Mr. Chisholm said every employee in state government is to be given an annual performance evaluation. The same thing is done in the Department of Corrections and Human Services. Over the last four years the Warden's evaluations have been good so there is nothing in these reports that would give any clue that there is any type of malfeasance or mismanagement. He is, in turn, responsible for the 400 employees under him.

REP. BROOKE said she has concern about the process. There are now committees meeting to develop the standards and physical structure for new buildings. What good is it if the Legislature invests another \$22,000,000 in that campus while allowing the population to increase to 1500? This will put in place absolute state-of-the-art correction's hardware but if people are not trained how to use it what good will it be? Mr. Chisholm said if they install and build state-of-the art buildings and equipment and don't effectively train their people, then they are not operating responsibly, efficiently or professionally.

REP. STICKNEY asked Mr. Chisholm if he is satisfied with the rehabilitative programs that are now in the prison system? He said no, not completely. He is not totally satisfied with how they operate nor the amount of resources they have dedicated to that effort or the process. However, they are making significant improvements.

REP. TOOLE said Mr. Chisholm would agree there are management problems in line with what he has learned in this report, yet he commented there is not any entity that accredits prisons. This suggests there is a problem in learning from the outside world what is going on at other facilities that manage these problems better. He asked what Mr. Chisholm and the Department intend to do to bring in additional assistance from outside to help evaluate and implement the changes that are going to be made and how does he intend to see to it he is more in tune with what is going on in Corrections than before the riot. Mr. Chisholm clarified his statement by saying there are entities who do accredit prisons and other aspects of correctional operations in

the state. His point was they have never asked for accreditation, therefore, whatever they do by virtue of policy, procedure or practice is not in relation to established frameworks for which they are held accountable as they are for the facilities for the Developmentally Disabled. Right now he is more interested in getting technical expertise into the Prison to assist the Corrections' Division Administrator and the Warden. At some future point in time the Department may ask for an outside accreditation review to see how close they come to passing established standards.

REP. TOOLE said there are things that could be institutionalized by way of getting on-going review year after year from accreditation agencies, procedures that are not in place and we don't follow now but could. He asked what is the scope, currently, of the review process and who from out of state is involved beyond this team and what is Mr. Chisholm's projection in terms of completing the review and utilizing experts and resources other than those within the Department. Mr. Chisholm said he needs money in order to bring in some technical expertise. He included that in a budget "supplemental" request and that was turned down. He hopes that this is not a message from the Legislature not to bring in outside technical expertise. Another option would be to send the Warden, by invitation, to spend a week or two with some of the wardens who were here as part of the Disturbance Analysis Team.

REP. WHALEN said until the issue of drug trafficking among staff is looked at, they won't know why problems arose in what should be one of the most secure places in the prison at the riot breakout last fall. Is this being addressed in any fashion? Mr. Chisholm said it is being addressed and is one of the continuing problems and concern for the Warden. The introduction of contraband into a prison occurs no matter how secure you feel you are or how adequate your intelligence systems are.

REP. WHALEN referred to a report about an incident in which an inmate was murdered in the yard and laid there for a half hour with people in the guard tower. He said this is disturbing in that this might indicate some kind of complicity between staff and inmates for the purpose of protecting the identities of those who might be involved in the drug traffic. Mr. Chisholm said the inmate found dead on the playing field of the high security compound. That was investigated very thoroughly by the prison and an outside resource, the Criminal Investigation Division of the Montana Department of Justice. They ultimately brought charges against inmates Gallehon and Turner. But, it does not seem to be drug related. It seemed to be a problem relative to violations of certain informant codes. The murder was committed at shift change, probably deliberately planned at that time. There were also 400 inmates in the yard, and a softball game in progress.

REP. WHALEN asked if that is usual to have shift change with 400

inmates in the yard. Mr. Chisholm said it is usual but something they are re-evaluating.

REP. HANSEN asked how often the Board of Visitors visits the prison and how affective do you feel they are. Mr. Chisholm said the Board of Visitors has no jurisdiction or any responsibility for evaluating this program. The Board of Visitors, under the Developmental Disabilities Act and the Mental Health Act, have the responsibility to visit and be an advocate for the patients in the DD system, but not the correctional system.

REP. KASTEN said when the Committee on Criminal Justice and Corrections met, one of the things they asked to be resolved was the operation of the Board of Pardons. Mr. Chisholm said the Board of Pardons now has a new Chairman and is scheduled to attend one of the NIC training seminars specifically geared for Chair persons of Parole Boards. REP. KASTEN said that about 30% of the inmates who would have been eligible for parole, yet, for some reason, have never followed through to complete the procedure. Is that percentage true? Mr. Chisholm said they are working the number of those inmates down.

REP. RUSSELL said the ACLU, in their comments, indicated that the Protective Custody programs are a farce. Secondly, she asked, if the programs have been moved, how does this impact the Legislature fiscally? Mr. Chisholm said it does not impact the Legislature fiscally. All prisons have inmates in protective custody. This will continue at Montana State Prison. The ACLU criticism is where those people are placed.

REP. BOHARSKI asked why didn't we know this was going to happen? Mr. Chisholm said they should do better with intelligence gathering, processing and handling information. REP. BOHARSKI asked if it is a common occurrence that you hear from people that there is something of this magnitude about to develop? Mr. Chisholm said he can't give a specific incident rate relative to the times things are reported that would relate to a possibility of such a problem.

REP. BOHARSKI referred to the comments about funding that says the prison is neither understaffed nor under-funded in general. There seems to be some questions about where the money is going once it gets to the Department of Corrections and Human Services. There were some allegations made that the turnover was phenomenally high compared to national standards and that the salaries for the employees was phenomenally low. How do we compare with the front-line staff up to management, as far as turnover, with other institutions? Mr. Chisholm said we are 15% below the national standard relative to salaries for line officers. The turnover rate is excessively high. The salaries of correctional officers have to be re-visited.

REP. BOHARSKI said he will presume Mr. Chisholm intends to bring to the 1993 Session recommendations on how we are treating the

line officers and other staff at the prison.

REP. BOHARSKI said there are a lot of comments in the report about whether or not there are adequate policies. Mr. Chisholm said it is addressing an unreasonable policy and not the performance of the Guards.

REP. MENAHAN, CHAIRMAN, SUB-COMMITTEE ON INSTITUTIONS AND CULTURAL EDUCATION, said the Department of Administration classifies employees at Deer Lodge as the pay level is concerned, in answer to a question from REP. WHALEN. REP. WHALEN said if he understands REP. MENAHAN'S answer correctly, if the Department of Administration is satisfied that an increase in pay for individual employees is needed, that would not necessarily require an act from the Legislature but the reclassification by Department of Administration for the positions. REP. MENAHAN said yes, that could be done and that can be recommended at any time. REP. WHALEN asked if it has ever been recommended? REP. MENAHAN said no, they have usually been cut.

REP. MENAHAN said Mr. Chisholm is not involved in day-to-day operations at the prison and wished some of the prison staff were present to testify so there would be two sides of the issue discussed. Maybe they should change some of Montana sentencing policies and have a sentence review program. He discussed several prison problems that he has seen firsthand as a resident of the area and brought several issues to the Warden. He was on the Design Committee for buildings and renovations to be made.

Mr. Chisholm reviewed the events of the disturbance and what they could learn from them. He wants this Committee and future Legislative Sessions to know he learned a lot relative to the deficits in the correctional system in the aftermath of the disturbance. He appreciated the interest on the part of Legislators in this meeting to respond to the report. He found the report very credible and will go forward with it.

ADJOURNMENT

Adjournment: 12:25 P.M.

  
BILL STRIZICH, Chair

  
MARY LOU SCHMITZ, Secretary

BS/MLS

HOUSE OF REPRESENTATIVES

HUMAN SERVICES COMMITTEE

ROLL CALL

DATE

1-14-92

NAME	PRESENT	ABSENT	EXCUSED
REP. TIM WHALEN, VICE-CHAIRMAN	✓		
REP. ARLENE BECKER	✓		
REP. WILLIAM BOHARSKI	✓		
REP. JAN BROWN	✓		
REP. BRENT CROMLEY		✓	
REP. TIM DOWELL	✓		
REP. PATRICK GALVIN		✓	
REP. STELLA JEAN HANSEN	✓		
REP. ROYAL JOHNSON	✓		
REP. BETTY LOU KASTEN	✓		
REP. THOMAS LEE	✓		
REP. CHARLOTTE MESSMORE		✓	
REP. JIM RICE	✓		
REP. SHEILA RICE	✓		
REP. WILBUR SPRING		✓	
REP. CAROLYN SQUIRES		✓	
REP. JESSICA STICKNEY	✓		
REP. BILL STRIZICH	✓		
REP. ROLPH TUNBY	✓		
REP. ANGELA RUSSELL, CHAIR	✓		
	15	5	

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE

1-14-92

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	✓		
REP. ARLENE BECKER	✓		
REP. WILLIAM BOHARSKI	✓		
REP. DAVE BROWN		✓	
REP. ROBERT CLARK		✓	
REP. PAULA DARKO		✓	
REP. BUDD GOULD			✓
REP. ROYAL JOHNSON	✓		
REP. VERNON KELLER	✓		
REP. THOMAS LEE	✓		
REP. BRUCE MEASURE		✓	
REP. CHARLOTTE MESSMORE		✓	
REP. LINDA NELSON	✓		
REP. JIM RICE	✓		
REP. ANGELA RUSSELL	✓		
REP. JESSICA STICKNEY	✓		
REP. HOWARD TOOLE	✓		
REP. TIM WHALEN	✓		
REP. DIANA WYATT		✓	
REP. BILL STRIZICH, CHAIRMAN	✓		
	13	6	1

Carol A. Mitchell

TESTIMONY OF CAROL A. MITCHELL  
HOUSE SUB-COMMITTEE ON HUMAN SERVICES AND AGING  
January 14, 1992  
RE: RIOT AT MAX

210 North Higgins  
Suite 202  
Missoula, Montana 59802  
(406) 728-2040

Madame Chairwoman and members of the Committee, I appear before you today as a citizen of this State, a former social worker and an attorney. During my career as an attorney I have worked both as a prosecutor and as criminal defense counsel. As a consequence, I have worked personally with many men and women who have been sentenced to serve time at the Montana State Prison and have visited them there. In year one of this work I felt just a bit superior to the folks charged with crimes, but by year 15 I have adopted a "There but for the grace of God go I" point of view.

Within the past few days I had the opportunity to read the report of the National Institute of Corrections' RIOT AT MAX. Perhaps because of my many years of exposure to the Montana State Prison, both the old facility and the new, I was not as shocked as others have been by the revelations of the report, but only because I have long been distressed and deeply disturbed by the conditions in our state prison. They are and have long been a disgrace to us as citizens of this state and as human beings. Preventing a human from being sentenced to our prison was always a source of motivation for me as I went through the interminably long hours of preparing for trial and my energy resources had long since been depleted.

My shock occurred when I first heard that a riot had broken out in the maximum security unit. If you have ever been in this unit, I think you shared my surprise. Given the cages and gates and grills and leg irons and belly chains and hand cuffs, one is struck with the seeming impossibility of inmates gaining control ever. And, in visiting with one of the attorneys who is representing three of the surviving protective custody inmates, one terribly brutalized, let me suggest that the report omits a very serious area of inquiry, by its own admission. The time and resources of this investigation team were simply too limited to address the connection between the riot and drug trafficking within the prison. But certainly those of you who have had time to read the report will agree with me that given the prior warning signals of the riot, i.e. written notes from prisoners and finding of pieces of chain link fence in prisoner's possession without follow-up inquiry by the staff certainly strikes the reader as most peculiar - quite unbelievable; that is, unless one entertains the possibility that there may have been a reason for at least some of the staff to have wanted a riot to occur; a riot in which inmates who had been "snitching" on the staff involved in the drug trafficking would be eliminated. And they were. The one protective custody inmate with whom I am familiar and who had previously reported more than one guard for drug trafficking is now dead.

Has such a proposition and connection been proved? No, but then it has not even been investigated. Perhaps it should be.

What the report did confirm for me is that the principal cause of the riot and the sub-human conditions which I have long abhorred is the lack of competent administration of the prison: training, supervision of security procedures, procedures during a riot, such as not leaving keys behind for the rioters to use to gain access to protected inmates cells. This finding, it seems to me should offer us hope. Poor administration can be dealt with. It can be remedied IF we Montanans choose to devote the time and attention to do so; more specifically IF you, our elected representatives, and the Governor make it possible for us to do so. It is clearly within the scope of your power and responsibility.

Why should you as government officials take action? Because on the most mundane level: riots cost money and lives; money better spent on more positive things. The report is clear that the riot was preventable. That finding in the report hands the surviving family members of the men killed quite a legitimate cause of action against this State. And what about the protective custody inmate whose legs were jumped up and down on steel stairs until they popped? We will now pay for his medical care and perhaps much more with money needed for the educations of my children and yours.

But for me, the more important question is: Why should we as human beings do something about these conditions? To determine our responsibility it is helpful for us to take a quick look at who these inmates are. Most of them come from families where violence was visited upon them as children. And our underfunded social service agencies failed to protect them. We failed to spot many of them before they dropped out of school, before they followed in the footsteps of their violent parents. Our alcohol and drug rehab units and programs were either inadequate, non-existent or too expensive...and still are. Included among these prisoners are men who have learned that life "ain't fair" and therefore why should they be? They enter our prison to be punished - and they should be!... and to be rehabilitated...and they are not. What they learn very quickly in the Montana State Prison is that those in authority are too often violent, inhuman and unfair. Their twisted view of life is confirmed. And so they hone their already considerable skills of surviving in that type of environment. And that is how we turn them loose at the end of their sentences. And we, the citizens of the towns to which they return, receive the benefit of their improved anti-social skills. We are burgled, assaulted, raped and murdered. And their children are launched into a renewed cycle of violence.

Touchy-feely stuff? I suppose. But I fear that we lose sight of what makes us human as we struggle with the ever present budget problems.

I ask you to support the proposal of Mr. Mueller that a Blue Ribbon Citizens group be appointed to assure that our prison is improved and that we meet our obligations as legislators, citizens and human beings.

Thank you.

# ACLU OF MONTANA

AMERICAN CIVIL LIBERTIES UNION

EXHIBIT  
DATE 7-14-92  
SB

P. O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763

## ACLU STATEMENT

TO

MONTANA HOUSE OF REPRESENTATIVES

JUDICIARY AND HUMAN SERVICES COMMITTEES

January 14, 1992

---

Members of the Judiciary Committee. My name is Rosemary Boschert. I am a resident of Billings, Montana where I have resided since 1950. Since 1974 I have been engaged in the active practice of law. Up until 1987, I practiced law, along with my husband, Ernest F. Boschert, who passed away in November, 1987. After my husband's death, I remained in the practice of law, as a sole practitioner, until May, 1991, when I semi-retired.

In addition to practicing law, I have been involved directly in the Montana Correctional System. In 1977, I was appointed to a four year term on the Montana Board of Pardons and Parole. My duties on the Board were to review inmates requests for parole, to interview those inmates, along with the other members of the parole board, and, ultimately, to approve or deny the inmates requests for parole brought before the Board.

I have also been a member of the Board of Directors of Alternatives, Inc., which is the governing body of a pre-release center in Billings, Montana since 1978. As this committee may know, the Pre-Release Center in Billings, known as Alpha House, was the first facility of its' kind in the State of Montana. The mandate of Alpha House and Alternative's, Inc., is to provide a "half-way house" for inmates of the Montana Prison System, in that it is designed to facilitate and enable the reintroduction of the inmates into society.

During the course of my tenure on the Board of Pardons, and on the Board of Directors of Alternatives, Inc., I have had the opportunity to meet inmates of the prison system face to face, to discuss with them their frustrations, goals, aims, and dreams in adjusting to society outside of the prison environment. Perhaps most importantly, I have been "conned" often enough to, I believe, distinguish between fact and fiction in dealing with the inmate mentality.

Finally, I have been a member of the American Civil Liberties Union for a number of years and, most recently, am serving on the litigation committee of that organization.

At this point, I would like to tell you that although I am here on behalf of the American Civil Liberties Union, I am also here as a citizen of this State who is personally concerned about the violations of Civil Rights which have been suffered by inmates at the Montana State Prison. Thus, I am not here only to speak the party line, but rather, to inform you as to my personal beliefs concerning this matter.

For your information, the purpose of the litigation committee of the ACLU is to review and screen allegations of civil rights violations which are reported to it. As you might imagine, a great number, but not all, of the alleged violations we receive and review are allegations of civil rights violations on behalf of prison inmates. As you might also imagine, a number of the alleged violations of civil rights received from prisoners amount to nothing more than empty allegations. However, from time to time certain of the allegations do give rise to what the members of the committee consider to be actionable violations.

As a result of the riot which occurred in the Maximum Security Unit of the Montana State Prison on September 22, 1991, the litigation committee of the ACLU received 66 letters from inmates of the prison, alleging that their civil rights had been violated in one manner or another. In addition, more and more letters are coming into the office of the ACLU daily. For my part, I have read and reviewed the initial 66 letters which I have referred to above. I might add that the letters I have reviewed have been sent not only by inmates who were housed in Maximum Security at the time of the riot, but also from inmates who were and are housed in every unit of the prison, including High Security, Low Security and the Dairy Dorm.

I must tell the members of this committee that my initial reaction to the first few letters I reviewed was one of skepticism, due to the fact that, as I mentioned above, I've been "conned" often enough to view such complaints with a jaundiced eye. However, after reading a number of the letters from inmates who were housed in Maximum Security at the time of the riot, I read a number of letters from inmates who were not housed in Max, but who observed, from their cells in High Security, the events which transpired after the prison administration regained control of the Max unit.

Specifically, the initial letters I reviewed made allegations of brutal, excessive and unbelievable treatment of the inmates housed in Max. The inmates alleged that they had been stripped naked, forced to run through a "gauntlet" of guards armed with

clubs, chains, flashlights and other weapons which were used to beat, club and strike the already handcuffed and naked inmates. The inmates alleged that they were beaten and thrown onto the ground while their hands were cuffed behind their backs, the result of which was they were unable to break their fall. They alleged that they were kicked, stepped on, taunted and brutalized by the guards, while lying naked on the ground. Ultimately, they alleged that they were left lying naked and handcuffed for a period of time in excess of eight hours. Many suffered sunburn, which was not treated, nor were measures taken to prevent the sunburn. The inmates alleged that they were forced to remain on the ground after dark when the temperature dropped to the point that the inmates became quite cold due to the fact they were naked.

Perhaps most poignantly, one of the letters I reviewed was from a 70 year old man who suffered the same indignities and violations set out above. Not only was this inmate elderly, but also he suffers from Tuberculosis, as well as other infirmities which are consistent with his advanced age.

As I mentioned, it has been my experience that allegations of these sort should be taken with a "grain of salt". However, after reading letter after letter which set out the same allegations, and, after reading letter after letter from inmates who observed the events from their High Security Cells, the allegations began to achieve credibility with me. This credibility was cemented when I read the report entitled Riot at Max, which was prepared by the Administrative Inquiry Team. In fact, much of the language used in the report is almost verbatim with language in the letters we received at the ACLU. After reading the report of the Administrative Inquiry Team, I have no doubt in my mind that the large bulk of allegations made by the inmates, in their letters to the ACLU, are absolutely true. In short, I am certain that we have not been "conned" in regards to the allegations arising out of the Riot in Max which occurred on September 22, 1991.

With the foregoing in mind, then, I would like to take this opportunity to address to this committee certain of my views concerning the administration and functioning of the Montana State Prison. The logical first point to consider is the concept of Protective Custody which is utilized to an apparent extensive degree by the Montana State Prison.

At the outset, it is important to recognize that the concept of Protective Custody is unique to the Prison systems in this country and Great Britain. No other countries use such a system and do not need it because they do not rely upon informants or, as they are more commonly known, snitches.

It is also important to recognize that the concept of Protective

Custody, as it is utilized by the Montana State Prison, is a misnomer, if not an abject failure. As this committee can readily see, the Protective Custody System utilized by the Montana State Prison has resulted in the deaths of five inmates who were in protective custody. In addition, the Protective Custody System has resulted in the near deaths of at least two other inmates who were beaten and left for dead by the rioters. Thus, it can be strongly argued that these 7 inmates have been directly victimized by the very system which we are told was designed to protect them.

It is also interesting to note that the protective custody inmates were acutely aware of the danger inherent in the very system which was designed to "protect" them. The ACLU office had received a number of letters from the Protective Custody inmates weeks before the riot occurred. In fact, included among these letters was a letter from at least one of the PC inmates who was subsequently murdered in the riot.

The consistent theme which ran through the letters received from the PC inmates prior to the riot was that they feared for their lives and for their safety. Therefore, it was clear to those inmates, if not to anyone else, that the Protective Custody System was a farce and that, if anything, the system exposed them to grave danger which was, in fact, heightened by their status as Protective Custody inmates. Unfortunately, their dire predictions proved to be not a "con" but a horrible reality.

Notwithstanding the fact that the PC inmates were subjected to a situation which ultimately cost some of them their lives, an examination of the Protective Custody System reveals that the system effectively serves to punish these inmates in a much more subtle fashion. A brief review of how an inmate becomes one within the PC system is appropriate here.

Apparently, one of the ways an inmate becomes in need of protective custody status is by informing, or "snitching" on other inmates. It is abundantly obvious that certain inmates are encouraged by the prison administration and staff to become a "snitch" by informing on other inmates. Apparently, the administration and staff of the prison believe that the "snitch" system is a viable way to keep tabs on illegal activity of the inmates within the prison. However, once an inmate has become an informant he finds himself caught in the midst of a "Catch-22" situation.

On the one hand, the informant becomes ostracized, hated and marked for abuse by the rest of the inmate population. As the riot underscores, the PC inmates are literally marked for death as soon as they come into the PC system. At the same time, once they have been used by the administration and staff, they are, for all intents and purposes, pariahs to that group as well.

After the inmates are placed in PC, they lose a number of privileges which they once enjoyed. The letters to the ACLU reflect that PC inmates effectively are segregated from the rest of the population once they are placed on that status. As a result, they are no longer able to have jobs, which result is loss of the ability to gain good time credit. They also find themselves restricted in regards to hobbies, self help programs, counseling and many of the other opportunities afforded to other inmates for the purpose of facilitating their so called rehabilitation and return to society.

In short, it is my opinion that the PC system which is utilized by the Montana State Prison is a condensed version of the criminal justice system utilized in this state as a whole. It appears to me that our system of criminal justice mouths the lofty goal of rehabilitation. However, in practice, as is clearly reflected in the Administrative Inquiry Team's report, the Montana State Prison is without the goals, aims, programs, and atmosphere necessary to achieve the stated purpose of rehabilitation. Rather, being sent to the Montana State Prison is solely a punishment for the commission of a crime.

Therefore, the result of this reality is that our criminal justice system perpetrates a fraud upon the individuals who are sentenced to the Montana State Prison. Perhaps more importantly, the criminal justice system of this state perpetrates a fraud upon the citizens of Montana who are the one's, in the final analysis, who must foot the bill for our penal system.

It is also abundantly clear that this fraud is further perpetrated by the administration and staff of the Montana State Prison by use of the protective custody system within the prison. Inmates are encouraged to become informants, then, once their usefulness is no longer apparent, they are discarded, discriminated against, and left to the not so tender mercies of inmate justice.

Finally, it is apparent that the prison population constitutes a society unto itself. I am prepared to concede that a necessary component of this system is the "military" portion of the society, which consists of the guards, staff and administration of the prison. Quite frankly, someone has to be in charge of such a society. Someone has to have power over others by the very nature of the environment. I am not about to argue to this committee that it is or should be a democratic institution. Rather, I freely admit that there must be a division between the inmates and the guards. The guards and administration must be in charge of the facility.

However, essential to any military operation or system is the concept of discipline and training. Not only discipline and

training of the inmate population, but rather, discipline and training of the guards, the staff and the administration. When that essential discipline and training of the guards, staff and administration is lacking, then it is not the guards, staff and administration who are in charge. Rather, the prison is being run by a mob. The inmates are not the only ones who can constitute a mob. Rather, ill-trained, ill-directed, ill-disciplined and ill-motivated guards can, and apparently did, constitute a mob unto themselves.

Finally, I submit to this committee that it is hard to imagine any situation more terrifying than that in which those who are in authority over others possess that authority without the benefit of discipline, training and accountability to the citizens which they are sworn to serve. I also submit that the necessity for discipline, training and accountability is not lessened in any way, shape or form by the fact that the Montana State Prison is dealing with convicted felons, as compared to ordinary citizens. In fact, one can make the argument that it is at this level that discipline, training and accountability is most critical to a free society such as ours.

Which leads me to my final and concluding point. I have been consistently amazed and troubled by the apparent failure of the administration and personnel of the Montana State Prison in refusing to acknowledge the veracity of the allegations which have been levied against the prison in relation to the conditions leading up to, during, and following the riot in Maximum Security on September 22, 1991. Rather than owning up to their culpability, the administration has consistently pointed their fingers at the inmates who actually rioted. The administration has refused to accept or admit that the conditions, generated at the prison by the administration and guards, provided the impetus to the riot which was surely inevitable. Likewise, they have repeatedly attempted to justify their actions in the wake of the riot on the grounds that security demanded it.

I submit to this committee that the responsibility and accountability for the conditions which led to the riot of September 22, 1991 must lie with the administration of the Montana State Prison. The institution must be directed to develop goals and policies which further the stated purpose of rehabilitation, as well as punishment. The administration must be held accountable not only to the victims of the riot and their families, but also to the citizens of the State of Montana, who, by law and by constitution, are entitled to preservation of constitutionally guaranteed civil rights of all citizens.

Finally, I urge this committee to make specific recommendations to the Montana legislature. As I have noted, the accountability and responsibility for the riot, which occurred at the Maximum Security Unit on September 22, 1991, must lie with the

administration of the prison. The lack of discipline, training, goals and policies designed to further the stated purpose of rehabilitation can only be attributed to the administrators of the prison. Therefore, on behalf of the Litigation Committee of the Montana Chapter of the American Civil Liberties Union, I respectfully request that this committee issue its joint resolution calling for the resignation and/or termination of Warden Jack McCormick and Deputy Warden Gary Weir. In addition, it is specifically requested that this committee recommended to the Montana House of Representatives and Montana Senate that appropriate proceedings be commenced to effectuate the impeachment of Curt Chisholm, Director of the Department of Corrections and Human Services.

It is with some difficulty that the ACLU makes this recommendation to this committee. However, in light of the fact that it is glaringly apparent that the deficiencies in the prison system are reflective of the lack of direction, motivation, and professionalism of the Deputy Warden, Warden, and Director of the Department of Corrections and Human Services, we can really see no alternative other than to seek the removal of these individuals. When it is realized that these are the people who are in charge not only of the Montana State Prison, but also the Warm Springs State Hospital and, in addition, are the individuals who will be charged with the responsibility of staffing, planning and directing the new Women's Correctional Facility, it is abundantly clear that a change in leadership is necessary. The House Judiciary and Human Services Committees must do all they can to insure that the conditions which resulted in the riot of September 22, 1991, not be allowed to develop again. The citizens of this state, as well as the inmates at our prisons, deserve leadership which is conducive to the stated goal of rehabilitation of adult offenders. The existing leadership has clearly demonstrated that they are unwilling, or unable, to provide such leadership.

As I mentioned previously, I have prepared this statement individually and on behalf of the Litigation Committee of the Montana Chapter of the American Civil Liberties Union. In that regard, I have been authorized to inform this Committee that the following members of the Litigation Committee are in agreement with, and endorse, the contents of this letter: Jeffrey T. Renz, Esq., Legal Director, Kyle Anne Gray, Esq., Marilee Duncan, Esq., and Dennis Michael Eakin, Esq.

Respectfully Submitted,



Rosemary C. Boschert  
Attorney at Law

 **MONTANA**  
**FEDERATION OF**  
**STATE EMPLOYEES**  
MFT, AFT, AFL • CIO

~~CONFIDENTIAL~~  
DATE 1-14-92  
P.O. BOX 6169  
HELENA, MONTANA 59604  
PHONE: 406-442-2123  
1-800-423-2803

JIM MCGARVEY  
President

statements to  
House hearing on  
prison riot, 1/14/92

The terrifying prison riot of Sept. 22, 1991, has forced Montanans to take a tough look at the strengths and weaknesses of their corrections system.

While the events that led to this scrutiny are tragic, we now have an unprecedented opportunity to fix the flaws and make working and living conditions better for all individuals associated with Montana State Prison.

As elected representatives of the people of Montana, you bear the responsibility of putting the recommendations and action plans of study panels and department leaders under the keenest of scrutiny. As you examine the findings recently released by the National Institute of Corrections, you'll be presented with many, many suggestions, criticisms and ideas for improving the atmosphere at Montana State Prison.

Unfortunately, to a significant degree, you've heard them before. Perhaps it's this chilling sort of deja vu that adds anxiety to prison employees' long-held frustrations over the way they've been compensated for their admirable, dedicated service.

Nothing has changed, in that sense. You've heard it before. Morale is still low. Pay is still low. Training is still virtually non-existent. At Montana State Prison, it's a pick-it-up-as-you-go system for which the state has finally paid the price.

We recognize and appreciate certain efforts by past Legislatures to fund new positions and programs that were undercut by the department's harmful decisions against spending the money and carrying out the legislative mandate. But many of the employees' concerns and efforts to improve the prison atmosphere never got to first base with the Legislature, let alone the administration.

Here are some of the familiar observations you'll find in the report from the National Institute of Corrections:

\* One out of five prison staff members left their jobs last year (fiscal '91).

Considering the 50 percent staff turnover that occurred at the prison shortly after a 1982 uprising where inmates overtook a cell unit, the 19 percent turnover rate experienced last year is sure to increase in the aftermath of September's riot.

Kevin McHale  
Field Representative,  
Montana Federation  
of State Employees



\* The beginning salary for a correctional officer, at \$15,563 per year, is more than 15 percent below the national average. That's 15 percent below the AVERAGE - not the top, competitive market rate - but the middle level of pay found nationwide.

\* The state doesn't entitle correctional officers to hazardous duty pay or line of duty death benefits, although state law enforcement officers such as the Highway Patrol receive these.

Prison employees have raised these issues with past administrations, past Legislatures, the Departments of Administration, Corrections and Human Services, and with elected lawmakers in the 1991 regular session.

Now, after the events of Sept. 22, we're past the point of applying 100 percent preventative medicine, because the tragedy has already occurred. But that shouldn't detract from any efforts to take corrective action and prevent countless future situations that would put the lives of Montanans in danger.

It's time to stop scrimping on safety and start making an investment in security that will be a bargain in the long run. As we meet here today, the state is preparing felony indictments against a dozen or so inmates who allegedly were responsible for the five murders that occurred in maximum security, where five correctional officers were held hostage. And we have yet to see the price tag on any litigation that might be brought against the state from the families of victims.

The threat of declining safety won't go away until the low pay of prison employees is brought more into line with their highly demanding jobs. These people are spit on, sworn at, threatened and assaulted. The compensation they get in return only leads to the loss of valuable, experienced employees.

The best way to reduce the state's future liability and to avoid events like those of Sept. 22 is to invest in a good system that trains and pays employees for a job well done. Montanans will never be able to afford the other alternative.

# Changing of the guard

## Poor management set stage for murderous prison uprising

**I**f you don't lock your doors at night, you would after reading the 104-page report from the team of experts called in to investigate the Sept. 22 riot at the Montana State Prison.

The report, prepared by specialists assembled by the National Institute of Corrections, ought to be required reading for every legislator and every administrator in state government. It paints a shocking picture of lax security, inept management and abusive treatment of prisoners at the Deer Lodge facility. If mismanagement of the prison wasn't the major cause of the murderous spree by maximum-security inmates, mistakes made at every level at least made the riot possible.

Security at the prison — not to mention in our communities — demands substantial changes in the way the prison operates.

The report details dozens of mistakes and conditions that made it possible for inmates to gain control of the prison's maximum-security building and kill five protective-custody prisoners. The investigation team's findings not only create doubt about the prison's ability to prevent further disturbances, they also raise questions about the institution's ability to keep dangerous criminals under lock and key. If nothing else, conditions the team documented within the prison undermine confidence in the institution's ability to reform inmates destined for parole.

For openers, many basic, common-sense security measures are routinely ignored. Keys are left in doors, doors are left propped open, inmates are left unsupervised.

Worse, despite a 19 percent annual turnover in prison staff, training of prison guards and other staff is appallingly poor. The investigation team found numerous examples where guards attempt to do their work well, but they and even their supervisors simply don't know how to do their jobs. The fault lies not so much with the lower-level employees but with a prison administration that neglects to provide even minimal training. One tragic example is that guards apparently didn't know they could have easily thrown switches locking all the cell doors before evacuating the two control booths. Not only had the guards not been trained in emergency procedures, they hadn't even been briefed on the building's security features. The prison didn't have a plan for dealing with

What's more, guards, supervisors and even prison administrators failed to heed clear, repeated and specific warnings that a riot was being planned. Evidence that a riot was imminent went unreported in some cases; in others, the information was lost in the shuffle of paperwork or simply ignored. Even after catching an inmate with pieces removed from the chain-link fence, no one bothered to inspect the only chain-link fence in the maximum-security compound, much less tighten security.

The investigation team's findings also point to a pattern of physical and psychological abuse of prisoners that serves to heighten tensions at the prison. Incredibly, after last spring's strike by state employees failed to produce hazardous-duty retirement for prison guards, some guards reportedly urged inmates to riot — presumably to give the public new appreciation for the dangers of being a prison guard. The investigation team found credible evidence of improper use of force by staff members before and after the riot, along with evidence that prison officials attempted to cover up reports of abuse. Further, actions ordered by prison administrators in the wake of the riot served only to increase tensions in the institution, leading to what the team describes as "a high probability of additional inmate violence."

State Department of Corrections and Human Services Director Curt Chisholm describes the team's damning report as "not so much an indictment as ... a corrections counseling document." He's absolutely wrong. It's impossible to read this report as anything but a searing indictment of the prison's administration.

Problems at the prison can't be blamed on money. The investigators found that Montana State Prison is neither understaffed nor underfunded, although prison guards are underpaid by national standards. The problem is that the institution is mismanaged.

The investigation team did offer considerable praise for Warden Jack McCormick and members of his staff for their leadership in quelling the riot — albeit too late to help the five protective-custody inmates murdered in the melee. However, this state needs prison administrators who can maintain control of the prison, not simply regain it when things go awry.

The report concludes that there is "little supervisory accountability at any level of the organization." It's time to start — from the top and working down. It's time to clean house at the Big House.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

*Judiciary & Human Services* COMMITTEE

BILL NO. \_\_\_\_\_

DATE 1/14/92 SPONSOR(S) \_\_\_\_\_

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
JOHN HORTWEIN	MT CATHOLIC CONF.			
Bill Skidmore	Independent Record			
Carley Tuss	American Civil Liberties Union			
Lee Lindgren	Independent Record			
HARLEY WARNER	MONTANA ASSOC. OF CHURCHES			
Kevin Staley				
B. Bauschert	Boysen			
Avery Beck	H D 48			
Jim Smith	AMI			
Gerald Mueller	self			
Carol Mitchell	self			
Nick P. ...	Senate			
BY ...	Senate			

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

